

MONTANA LEGISLATIVE HISTORY

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Chapter 688 19 91

Bill H 471 S _____

Original bill & history ✓c

H. Committee on Bus. & Ec. Dev.

S. Committee on Judiciary

Hearing Date(s) _____ c

Hearing Date(s) _____ c

2/6 ✓c

3/18 _____ c

_____ c

_____ c

_____ c

_____ c

Date Out 2/6 ✓c

Did this bill originate in an interim committee? _____ Yes _____ No

Committee _____

Report _____

2/26	3RD READING PASSED	97	1
	TRANSMITTED TO SENATE		
2/27	FIRST READING		
2/27	REFERRED TO EDUCATION & CULTURAL RESOURCES		
3/18	HEARING		
3/21	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/22	2ND READING CONCURRED	47	1
3/23	3RD READING CONCURRED	45	2
	RETURNED TO HOUSE WITH AMENDMENTS		
4/08	2ND READING AMENDMENTS CONCURRED	89	6
4/09	3RD READING AMENDMENTS CONCURRED	92	6
4/15	SIGNED BY SPEAKER		
4/15	SIGNED BY PRESIDENT		
4/15	TRANSMITTED TO GOVERNOR		
4/19	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 497		

EFFECTIVE DATE: 7/01/91

HB 471 INTRODUCED BY R. JOHNSON, ET AL.

CLARIFY TRUST APPLICATION TO CERTAIN
BONDS AND TRUSTEE AUTHORITY

1/30	INTRODUCED		
1/30	REFERRED TO BUSINESS & ECONOMIC DEVELOPMENT		
1/31	FIRST READING		
2/06	HEARING		
2/06	COMMITTEE REPORT—BILL PASSED		
2/09	2ND READING PASSED	93	1
2/12	3RD READING PASSED	95	1
	TRANSMITTED TO SENATE		
2/13	FIRST READING		
2/13	REFERRED TO JUDICIARY		
3/18	HEARING		
3/18	COMMITTEE REPORT—BILL CONCURRED		
3/20	2ND READING CONCURRED	48	0
3/21	3RD READING CONCURRED	49	0
	RETURNED TO HOUSE		
3/27	SIGNED BY SPEAKER		
3/27	SIGNED BY PRESIDENT		
3/27	TRANSMITTED TO GOVERNOR		
4/01	RETURNED TO HOUSE WITH GOVERNOR'S AMENDMENTS		
4/08	2ND READING GOVERNOR'S AMENDMENTS CONCURRED	97	0
4/09	3RD READING GOVERNOR'S AMENDMENTS CONCURRED	96	2
	TRANSMITTED TO SENATE		
4/17	2ND READING GOVERNOR'S AMENDMENTS CONCURRED	49	0
4/18	3RD READING GOVERNOR'S AMENDMENTS CONCURRED	49	0
	RETURNED TO HOUSE		
4/24	SIGNED BY SPEAKER		
4/24	SIGNED BY PRESIDENT		
4/24	TRANSMITTED TO GOVERNOR FOR RECONSIDERATION FOR RECONSIDERATION		
4/27	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 688		

EFFECTIVE DATE: 4/27/91

HB 472 INTRODUCED BY J. DEBRUYCKER, ET AL.

CLARIFY LOBBYING DEFINITIONS AND REPORTING
BY REQUEST OF COMMISSIONER OF POLITICAL PRACTICES

1 *House* BILL NO. *471*
2 INTRODUCED BY *[Signature]*
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
5 LAW RELATING TO TRUSTS TO CLARIFY THAT A TRUST INCLUDES A
6 TRUST CREATED IN CONNECTION WITH CERTAIN BONDS; CLARIFYING
7 THAT THE DESIGNATION OF A TRUST IN A CONVEYANCE VESTS THE
8 ESTATE IN THE TRUSTEE; AMENDING SECTIONS 72-33-108 AND
9 72-36-206, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 **Section 1.** Section 72-33-108, MCA, is amended to read:

13 **"72-33-108. Definitions.** As used in chapters 33 through
14 36, unless the context requires otherwise, the following
15 definitions apply:

16 (1) "Beneficiary" means a person who has any present or
17 future interest, vested or contingent, and also includes the
18 owner of an interest by assignment or other transfer and, as
19 it relates to a charitable trust, includes any person
20 entitled to enforce the trust.

21 (2) "Person" means an individual, a corporation, an
22 organization, or other legal entity.

23 (3) "Property" includes both real and personal property
24 or any interest therein and means anything that may be the
25 subject of ownership.

1 (4) "Trust" when not qualified by the word "resulting"
2 or "constructive", includes any express trust, private or
3 charitable, with additions thereto, wherever and however
4 created. It also includes a trust created or determined by
5 judgment or decree under which the trust is to be
6 administered in the manner of an express trust and, unless
7 otherwise provided in the trust instrument, a trust
8 established in connection with bonds issued under Title 90,
9 chapters 2 and 4 through 7. The term does not include
10 conservatorships, personal representatives, custodial
11 arrangements pursuant to chapter 26 of this title, business
12 trusts providing for certificates to be issued to
13 beneficiaries, common trust funds, voting trusts, security
14 arrangements, liquidation trusts, and trusts for the primary
15 purpose of paying debts, dividends, interest, salaries,
16 wages, profits, pensions, or employee benefits of any kind
17 and any arrangement under which a person is nominee or
18 escrowee for another.

19 (5) "Trustee" means the person holding property in
20 trust. The term includes an original, additional, or
21 successor trustee, whether or not appointed or confirmed by
22 a court.

23 (6) "Trustor" means the person who creates a trust.

24 (7) "Trust company" means an entity which has qualified
25 to engage in and conduct a trust business in this state.

(8) "Trust property" means the property held in trust."

Section 2. Section 72-36-206, MCA, is amended to read:

***72-36-206. Effects on real property transactions. (1)**

This section relates only to conveyances of real property to or from a trust, and supplements, but does not modify other substantive provisions of chapters 33 through 36 relating to the creation or validity of trusts. This section does not affect conveyances recorded prior to October 1, 1989.

(2) Except as otherwise provided in chapters 33 through 36, a conveyance of real property to a trustee designated as such in the conveyance vests the whole estate conveyed in the trustee, subject only to the trustee's duties. The beneficiaries of the trust take no estate or interest in the real property, but may determine or enforce the terms of the trust as provided in chapters 33 through 36.

(3) An instrument creating or amending a trust need not be recorded, but may be if properly acknowledged.

(4) If there is no clear reference to or designation of a grantee as trustee in a conveyance (nor in a separately recorded instrument recorded in the same county as the conveyance and describing the same property as described in the conveyance), the conveyance shall be considered to be absolute to the grantee, in favor of purchasers or encumbrancers from the grantee, who were without actual knowledge and who acted for a valuable consideration,

despite any valid trust which may exist.

(5) Unless limitations upon a trustee's power or authority are set forth in the recorded conveyance of real property to the trustee or in a separate trust instrument (or portion thereof, or abstract thereof) recorded in the same county, there are no limitations upon the trustee's power or authority to convey or encumber the real property in favor of third persons who were without actual knowledge and who acted for a valuable consideration. A separate trust instrument incorporated by reference in a conveyance to a trustee cannot limit the trustee's power or authority to convey or encumber unless the limitations are set forth in the trust instrument (or portion thereof or abstract thereof) which is also recorded in the county where the real property is located. An amendment to a recorded trust instrument may not affect the power or authority of a trustee to convey or encumber unless it is also recorded in the same place.

(6) A subsequent conveyance from a person designated in the original conveyance as trustee (or from his successor trustee) conveys the whole estate vested in the trustee, except as limited by the terms of the conveyance. The identity of any successor trustee may be established by a recorded affidavit of the successor trustee specifying his name and address and the date and circumstances of his

1 succession, and confirming that he is currently lawfully
2 serving in such capacity.

3 (7) In an action or proceeding by a third person
4 involving the real property granted to a trustee, the person
5 designated as trustee in the original conveyance, or the
6 successor trustee as established in subsection (6), or, if
7 none, the person then actually serving as trustee, or, if
8 none, any beneficiary designated by the court to represent
9 the interests of the beneficiaries, shall be considered the
10 only necessary representative of the trust and of all
11 persons with an interest therein. A judgment is binding upon
12 and conclusive against the trust and all persons interested
13 therein as to all matters finally adjudicated in the
14 judgment.

15 (8) The designation of the name of a trust in a
16 recorded conveyance vests the estate in the trustee of the
17 trust. A subsequent conveyance may be made by the trustee.
18 The identity of a party serving as trustee may be
19 established by a recorded affidavit of the party, specifying
20 his name and address and confirming that he is currently
21 serving as the trustee."

22 NEW SECTION. Section 3. Effective date. [This act] is
23 effective on passage and approval.

-End-

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT

Call to Order: By REP. BOB BACHINI, CHAIRMAN, on February 6,
1991, at 8:00 a.m.

ROLL CALL

Members Present:

Bob Bachini, Chairman (D)
Sheila Rice, Vice-Chair (D)
Joe Barnett (R)
Steve Benedict (R)
Brent Cromley (D)
Tim Dowell (D)
Alvin Ellis, Jr. (R)
Stella Jean Hansen (D)
H.S. "Sonny" Hanson (R)
Tom Kilpatrick (D)
Dick Knox (R)
Don Larson (D)
Scott McCulloch (D)
Bob Pavlovich (D)
John Scott (D)
Don Steppler (D)
Rolph Tunby (R)
Norm Wallin (R)

Staff Present: Paul Verdon, Legislative Council
Jo Lahti, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Announcements/Discussion: HB 471 and HJR 15 were heard, and
executive action taken on them.

HEARING ON HOUSE BILL 471

Presentation and Opening Statement by Sponsor:

REP. ROYAL JOHNSON, HD 88, Billings, explained HB 471 is for
clarification of the trust fund laws. It is an Act to generally
revise the law relating to trusts to clarify that a trust
includes a trust created in connection with certain bonds;
clarifying that the designation of a trust in a conveyance vests
the estate in the trustee; amends Sections 72-33-108 and 72-36-
206, MCA; and provides an immediate effective date. For the last
couple of sessions the trust funds have had a committee studying

trust laws. They suggested to this Legislature a number of changes. This bill has two parts to it. On Page 2, line 6, some language has been added. Bruce MacKenzie, Dorsey & Whitney, Great Falls, will speak about this.

This law has to do with the establishment and using of trusts, particularly for bonds, and particularly those that have gone into default. The second part is on Page 5 where New Subsection (8) has been added. One of the problems happening in the trust business is that people who have decided to establish their own trust, and don't use a lot of legal help, end up registering their assets incorrectly. The people who are transferring them don't want to do the transferring under the conditions under which they are registered; e.g. set up the Royal C. Johnson trust, I'm the trustee for L.C. Johnson, trustee, transfer an asset into the Royal C. Johnson trust; according to present law, ownership has not been changed. It should be registered as Royal C. Johnson, Trustee. The document of Trust has the beneficiaries, or the succeeding trustees named in the trust instrument and therefore the transfer can be made even if that person is deceased. This has caused a number of problems. Professor Ed Eck from Missoula wrote this language. Each section of this bill was presented to the trust committee of the State Bar Association, and then it was presented to them in its entirety. They added some minor amendments before it was submitted to the Legislature. No opposition is expected. He introduced Bruce MacKenzie.

Proponents' Testimony:

Bruce MacKenzie, member of Dorsey & Whitney, Great Falls, represented DAD CO Companies, D.A. Davidson Corporation Trust Corporation of Montana, and Financial Aims Corporation who primarily do trust work. They are the registered trust company for Montana. HB 471 contains two amendments to the existing Trust Code of Montana. EXHIBIT 1. Circumstances require changes in bonds assets in a trust indenture, and the trustee must be able to act without the consent of all the bondholders, thereby putting himself liable or having transactions fail. The first amendment brings these trust indentures under the coverage of the Trust Code, allowing a trustee to seek judicial supervision of any modification. Such supervision would provide protection to the trustee for proceeding with a modification not presently permitted under the documents to work out of a default situation which they cannot do now. Minnesota has provided for a very similar amendment for trust indentures issued for industrial development revenue bonds and other bonds of that nature which are similar to the Title 90 bonds issued in Montana. They provide for the same change for just those specific trust indentures included under the Trust Code. It is not necessary to bring all trust escrow arrangements given as security for residential and other matters under the Trust Code. It would provide unnecessary overburden. It is only needed for these particular bonds. The First Trust Company supports this legislation and was one of the major forces behind it. There have been no negative comments from

any members of the industry. They seek this type of clarification of default.

The second change is one promoted by the Trust Law Revision Committee itself. It deals with the increasing use of revocable trusts and the practice of designating a trust name and the document conveying ownership of property to the trust name rather than the name of a trustee. Under trust law the trustee is required to hold title to all property within the trust. Conveying it to the trust name leaves it in limbo. This bill provides, in the event the individual conveys it to the trust name, the recording entities and other parties can rely on that as a transfer to the trustee itself, so actual title has been conveyed.

Opponents' Testimony: None

Questions From Committee Members:

REP. WALLIN asked how HB 471 would affect an irrevocable trust from which you get interest and income while you are still alive. Mr. MacKenzie said this bill would not affect it whatsoever. The Trust Code that is in place right now governs an irrevocable living trust. The only change that would be made in that particular situation is whether the individual conforming to the irrevocable living trust had conveyed his property improperly under current law to the name of the trust as opposed to the named trustee under that trust, then this bill would recognize that conveyance as a proper conveyance to the trust, and it would not disallow any benefits should they be contested at a later date. This bill cures that conveyance in a proper fashion.

REP. WALLIN asked if the valuation of that property was in error and the amount of interest the grantor expected to get out of that trust falls short of that, is there any recourse or anything that can be done? Mr. MacKenzie was not certain of the question. This bill would not address errors in the valuation of property. This only cures an error in the transfer of the property to the trust itself.

REP. STELLA JEAN HANSEN said on the bottom of the first page of EXHIBIT 1 it talks about title companies advising counsel that laymen who are making conveyances on their own and some lawyers are not making conveyances properly. They are putting property in a trust name rather than the name of a trustee. Is that right? Mr. MacKenzie said that is exactly right. REP. HANSEN asked if that means they could use the trust name rather than the trustee. Mr. MacKenzie said it means that under present law, in order for property to be properly held by a trust, it must be conveyed to the name of the trustee. Under Montana law, the party that holds title to the property in trust, the proper party, is a trustee. You cannot name a conveyance to a trust without conveying it directly to the trustee. A number of people creating their own trusts are doing it incorrectly. They are conveying the property

unbeknownst to them to the name of the trust. HB 471 cures that by saying when it is transferred to the name of the trust, you have in fact transferred it to the name of the trustee. REP.

HANSEN asked if this pertains only to a trust that had property in trust in it and not other types of trust accounts? Mr.

MacKenzie said that is correct. If you look at the definition of what trusts are covered under the Trust Code, it covers most personal trusts and trusts held by trust companies, individual trusts. It does not cover individual retirement accounts. When you go through the first part of the bill, the definition of what trusts are covered in Section 1, (4), 1084 defines what trusts are actually covered by the Trust Code. It is specific in its exclusive language what trusts are not covered. For example, conservators, personal representatives, custodial arrangements, business trusts, common trust funds, voting trusts, security arrangements, etc. REP. HANSEN was referring to business trusts or a holding trust where funds are held in a trust. Mr. MacKenzie said that would be covered if it is a trust created under Montana trust law. A business trust is a trust of companies that are holding all of the shares of those groups of companies in trust. For example, some Massachusetts lines are called business trusts rather than corporations.

REP. BACHINI said on Page 5 in that new language in line 18, starting with "The identity of a party serving as trustee may be established by recorded affidavit of the party, specifying his name and address", is there someone else identifying that person? Mr. MacKenzie explained the trustee himself would identify himself under the trust document. The trust document identifies the trustees; and in the event there is a recorded document conveying property to the trust name, then that trustee would record an affidavit with the clerk and recorder saying he is the trustee under this trust. Here is the trust document of which I am the trustee, therefore, that has the ability to convey the property directly.

REP. WALLIN asked how is the trustee given authority to finance that kind of a thing if it is not through a bank or trust company? Mr. MacKenzie said the investment powers are specified in the trust document itself. The trust document controls to the extent that it can remove the trustee or dissolve the trust document by law. REP. WALLIN asked if that meant you might have to go to court. Mr. MacKenzie said it means you may have to go to court to prove the trustee has not handled the trust properly. Under the Trust Code there are provisions for removal of a trustee. This bill doesn't have anything to do with that.

Closing by Sponsor:

REP. SOUTHWORTH addressed REP. WALLIN's question. An irrevocable trust for the most part is usually during the person's lifetime; they usually take care of the registration, etc. and usually have more legal input to set up that kind of trust. In a revocable trust, what sometimes happens is that the person setting it up,

and that is no great thing to do, registers it incorrectly. This is to address the fact that registration is correct in the minds of the persons involved.

HEARING ON HOUSE JOINT RESOLUTION 15

Presentation and Opening Statement by Sponsor:

REP. NORM WALLIN, HD 78, Bozeman, explained HJR 15 requests the Governor to proclaim the second week of October each year as Montana's official Inventors' and Innovators' Week, and the Department of Commerce is to arrange suitable observances and the public schools to take appropriate notice of that week. The Inventors' Society was interested in this piece of legislation. Last summer the Inventors Society met in Helena, the Governor was there, and they said they would like to have some time designated since there are quite a few inventors in Montana and they should be encouraged. The Governor agreed to that, but said they really should have legislation to take care of that request. Mr. Emerson, President of King Tool, wrote to remind him of this agreement. King Tool is a company in which inventors make specialized tools for doctors, dentists, small operators. This bill was written by Mr. Birkland of Lawson & Wilson. It was taken to the Governor who saw no problem. There probably will be no one dissenting.

Proponents' Testimony: None

Opponents' Testimony: None

Questions From Committee Members:

REP. McCULLOCH asked why it is the second week of October. REP. WALLIN explained that was alright with the Governor.

REP. BENEDICT asked how many inventors there are in Montana. REP. BACHINI mentioned they were called to a meeting of the Inventors in Havre and he was surprised at the number of people who do a lot of inventing. It was quite interesting, so he would imagine there are quite a few in Montana.

REP. BARNETT added that King Tool has always set up what is called the Inventors' Hall of Fame, and this would be something that would add recognition to that.

Closing by Sponsor:

REP. WALLIN closed.

EXECUTIVE ACTION ON HJR 15

Motion/Vote: REP. STEPPLER moved HJR DO PASS. Motion carried unanimously.

HOUSE BUSINESS & ECONOMIC DEVELOPMENT COMMITTEE

February 6, 1991

Page 6 of 6

EXECUTIVE ACTION ON HOUSE BILL 471

Motion/Vote: REP. CROMLEY moved HB 471 DO PASS. Motion carried unanimously.

REP. BACHINI passed around the Resolution drafted by Mr. Verdon opposing imposition of a tax on people returning to Canada. Committee members who wished to do so could sign it. He had received information from Mr. Brooks, of the Montana Retail Association, regarding the significant amount of business Canadians do in the Kalispell area. Other areas in Montana also benefit a great deal from Canadian trade. It is very important the federal government reconsider border fees because it would be detrimental to the United States-Canadian Free Trade Agreement. Whatever form this Resolution takes, all the Congressmen will be sent a copy.

ADJOURNMENT

Adjournment: 8:45 a.m.



REP. BOB BACHINI, CHAIRMAN



JO LAHTI, Secretary

BB/jl

BUSINESS AND ECONOMIC DEVELOPMENT COMMITTEE

DATE Feb. 6, 1991

[illegible]

HOUSE STANDING COMMITTEE REPORT

February 6, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Business and Economic Development report that House Bill 471 (first reading copy -- white) do pass .

Signed: _____

Bob Bachini
Bob Bachini, Chairman

Exhibit 1
2-6-91
HB 471

MEMORANDUM

TO: House Business and Industry Committee
FROM: Bruce MacKenzie
DATE: February 5, 1991
RE: House Bill 471 - Testimony of Bruce MacKenzie

House Bill 471 provides two amendments to the existing Trust Code of Montana (the "Code"). The first amendment expands the definition of "trusts" and makes the Code applicable to trust indentures created for the purposes of issuing industrial development, health facility, mining impact, renewable resource or conservation program bonds pursuant to Title 90, M.C.A. Bonds issued under these sections of the law require a trust indenture pursuant to which a trustee acts on behalf of all bondholders in enforcing the terms of the bonds and security agreements. There are times during the life of the bonds, either due to a default or as a result of change in circumstances, that modifications to the trust indenture or other security documents are necessary. Often, these modifications may not be permitted under the terms of the documents and the trustee would be exposed to breach of fiduciary duty if it consented to the modifications without the consent of all bondholders. Such consents are practically impossible. The trustee is then left with the Hobson's choice of going forward with the modification and being exposed to liability or refusing the modification and having the transaction fail completely.

By amending the definition of "trusts" to bring these trust indentures under the coverage of the Code, a trustee would then be allowed to seek judicial supervision of any modification. Judicial supervision would provide protection to the Trustee for going forward with a modification not presently permitted under the documents. [See provisions of Montana Code Annotated Section 72-33-413 (modification of termination) and 72-35-301 (proceedings concerning trusts)].

The second amendment deals with the increasing use of revocable trusts and the increased practice of designating a trust name and the document conveying ownership of property to the trust. Title companies have advised counsel that laymen who are making conveyances on their own, as well as some lawyers, are conveying property to a trust name rather than the

Ex. 1

2-6-91

HB 471

-2-

February 5, 1990

name of a trustee. The amendment appearing in Section 2 cures this problem by stating that the designation of the name of the trust vests the estate in the name of the trustee of that trust.

Both amendments have the approval of the Montana Bar Association Trust Law Revision Committee.

If you have any questions or if I can provide any additional information, please do not hesitate to contact me.

BAM:dk-g
1039b

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Business & Econ Dev. COMMITTEE BILL NO. HB 471
DATE Feb. 6, 1991 SPONSOR(S) Rep. Royal Johnson
PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Bruce A. McKenzie	DADCO	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

Proponents' Testimony:

John Alke, Helena attorney representing the Montana Defense Trial Lawyers Association, told the committee that the general purpose of HB 191 is to prevent parties from forum shopping in Montana simply to get a longer statute of limitations. He noted that the Montana Defense Trial Lawyers Association supports HB 191 and thinks that it is fair. Mr. Alke asked the Committee to support the bill.

Opponents' Testimony:

There were no opponents of HB 191.

Questions from Committee Members:

Senator Mazurek asked if the Montana Trial Lawyers Association supported HB 191. Representative Measure replied that they did.

Closing by Sponsor:

Representative Measure thanked the Committee, and asked them to pass HB 191.

EXECUTIVE ACTION ON HOUSE BILL 191

Motion:

Senator Halligan made a motion that HB 191 BE CONCURRED IN.

Discussion:

There was no discussion.

Amendments, Discussion and Votes:

There were no amendments.

Recommendation and Vote:

The motion made by Senator Halligan carried unanimously.

HEARING ON HOUSE BILL 471

Presentation and Opening Statement by Sponsor:

Representative Royal C. Johnson, District 88, stated that HB 471, an act to generally revise the law relating to trusts to clarify that a trust includes a trust created in connection with

certain bonds, and clarifying that the designation of a trust in a conveyance vests the estate in the trustee, would be explained in detail by Bruce MacKenzie.

Proponents' Testimony:

Bruce MacKenzie, attorney, Dorsey & Whitney (a Great Falls law firm representing DADCO Companies), read from a prepared statement in support of HB 471 (Exhibit #1). He said HB 471 has two amendments, which were approved by Professor Ed Eck, University of Montana Law School, who is also Chairman of the Trust Revision Committee of the State Bar of Montana. He said the amendments were also endorsed by the Trust Revision Committee of the State Bar of Montana, and asked that the Committee give HB 471 a favorable recommendation.

Opponents' Testimony:

There were no opponents of HB 471.

Questions from Committee Members:

Senator Crippen asked if the second amendment, dealing with irrevocable trusts, addressed some of the problems created by the expansion of this kind of document. the country. He stated that it would be a way of avoiding probate, and could result in tax dollar savings. Senator Crippen commented that it could end up putting the state in greater jeopardy, and that he sees problems with the bill. Mr. MacKenzie replied that the bill only one of the problems arising from irrevocable trusts: that of conveyance of property in an improper manner, by using the trust name.

Mr. MacKenzie further stated that title companies have continually come to lawyers, who designate a trust name as a transmittal document, but this only cures that one small problem. He reported that members of the Trust Revision Committee wanted this changed, and said he saw some potential problems with the change. Mr. MacKenzie stated he is not sure if the property should remain in the name of the trustee.

Senator Crippen noted that an irrevocable trust is a problem, and said Professor Ed Eck and others have written some Law Review articles on this issue.

Closing by Sponsor:

Representative Johnson said he kept his introduction short as all the questions at the House Judiciary hearing were addressed to Mr. MacKenzie. He asked the Committee to concur in House Bill 471, and said the Trust Committee has worked diligently for a number of years to straighten out a lot of these things. Representative Johnson questioned whether Senator Crippen's concerns had been

addressed, and said this may be a problems for the next Legislative Session to address. He thanked for the hearing, and asked that Senator Halligan carry the bill.

HEARING ON HOUSE BILL 552

Presentation and Opening Statement by Sponsor:

Representative Brent R. Cromley, District 94, said HB 552 generally revises Montana business corporation law. He stated that the bill should not to be taken lightly, as it has been almost two years in the making. Representative Cromley explained that Gary Spaeth, former President of the State Bar of Montana, appointed a committee who worked hard on this issue, using current statutes and the Revised Model Business Corporation Act.

Proponents' Testimony:

Professor Steven Bahls, University of Montana School of Law, submitted a copy of the State Bar's Committee on Corporate Law Revision Suggested Revisions in the Montana Business Corporation Act (MCA, Title 35, Chapter One) and the Montana NonProfit Corporation Act (MCA, Title 35, Chapter Two) dated October 24, 1991 (Exhibit #2), and read from prepared testimony in support of HB 552 (Exhibit #3). He also submitted a copy of the Executive Summary, HB 552, State Bar of Montana, Corporate Law Revision Project (Exhibit #4).

Robert Michelotti, Jr., attorney, Crowley, Haughey, Hanson, Toole & Dietrich law firm, Billings, said he served on the Corporate Law Revision Committee, and also on the Trust Law Revision Committee, of the State Bar of Montana, but is not a regular participant in the legislative process. He noted that, as a practitioner, the trust law revisions are something that Montanans can all be proud of, as they provide clear and concise guidelines with respect to the operation of corporations.

Mr. Michelotti stressed that the new law does provide some clear guidance with respect to director's and officer's liability. He said the number of directors, can be changed up to 30 percent, and that the bill retains shareholder rights, thus, basically, retaining the number of directors. Mr. Michelotti stated that the law provides the procedure for resignation and removal of directors and officers, and for electronic (tele-conference) meetings. He further explained that it also provides for the use of committees which is common in this day and age, and gives clear guidance as to the standards of conduct governing the directors in conflicts of interests. He thanked the Committee, and urged them to act positively toward HB 552.

Robert Murdo, Vice Chairman, Corporate Law Revision Committee, State Bar of Montana, and attorney, Jackson, Murdo & Grant law firm, Helena, advised the Committee that, in 1982 he worked on this

Closing by Sponsor:

Representative Bradley requested that Senator Doherty carry HB 303, and that Senator Pinsoneault carry HB 272., and made no closing comments.

EXECUTIVE ACTION ON HOUSE BILL 741

Motion:

Senator Mazurek will carry the bill. Senator Crippen made a motion that HB 741 BE CONCURRED IN.

Discussion:

There was no discussion.

Amendments, Discussion, and Vote:s

There were no amendments.

Recommendation and Vote:

The motion made by Senator Crippen carried unanimously.

EXECUTIVE ACTION ON HOUSE BILL 552

Motion:

Senator Crippen made a motion that HB 552 BE CONCURRED IN.

Discussion:

There was no discussion.

Amendments, Discussion, and Votes:

There were no amendments.

Recommendation and Vote:

The motion made by Senator Crippen carried unanimously.

EXECUTIVE ACTION ON HOUSE BILL 471

Motion:

Senator Halligan made a motion that HB 471 BE CONCURRED IN.

Discussion:

There was no discussion.

Amendments, Discussion, and Votes:

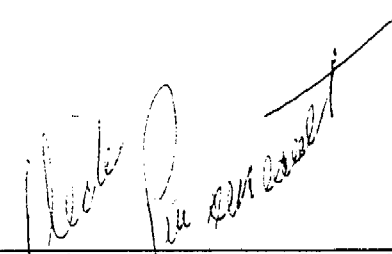
There were no amendments.

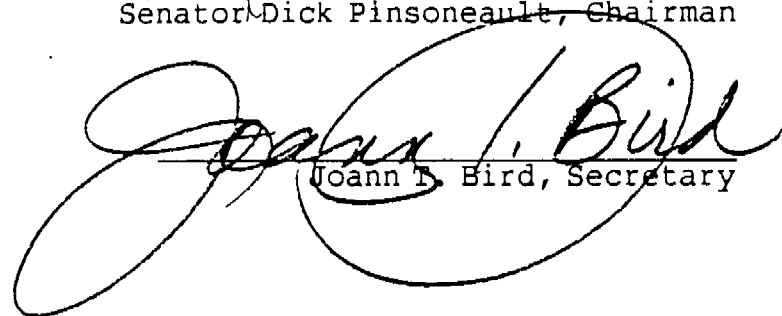
Recommendation and Vote:

The motion made by Senator Halligan carried unanimously.

ADJOURNMENT

Adjournment at: 12:10 P.M.



Senator Dick Pinsoneault, Chairman

Joann B. Bird, Secretary

DP/jtb

ROLL CALL

SENATE JUDICIARY

COMMITTEE

52nd LEGISLATIVE SESSION -- 1999

Date 3-8-91
10:00am

NAME	PRESENT	ABSENT	EXCUSED
Sen. Pinsoneault	/		
Sen. Yellowtail	/		
Sen. Brown	/		
Sen. Crippen	/		
Sen. Doherty	/		
Sen. Grosfield	/		
Sen. Halligan	/		
Sen. Harp			
Sen. Mazurek	/		
Sen. Rye	/		
Sen. Svrcek	/		
Sen. Towe	/		

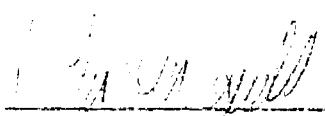
Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 18, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 471 (third reading copy -- blue), respectfully report that House Bill No. 471 be concurred in.

Signed: 

Richard Piosoneault, Chairman

LB 3/8/91
Amd. Coord.

3/18/91 12:30
Sec. of Senate

581217SC.SB8

Handwritten notes: "HB 471" and "18 March 1991".

MEMORANDUM

TO: Dick Pinsoneault, Chairman
Senate Judiciary Committee

FROM: Bruce MacKenzie

DATE: March 18, 1991

RE: House Bill 471 - Testimony of Bruce MacKenzie

House Bill 471 provides two amendments to the existing Trust Code of Montana (the "Code"). The first amendment expands the definition of "trusts" and makes the Code applicable to trust indentures created for the purposes of issuing industrial development, health facility, mining impact, renewable resource or conservation program bonds pursuant to Title 90, M.C.A. Bonds issued under these sections of the law require a trust indenture pursuant to which a trustee acts on behalf of all bondholders in enforcing the terms of the bonds and security agreements. There are times during the life of the bonds, either due to a default or as a result of change in circumstances, that modifications to the trust indenture or other security documents are necessary. Often, these modifications may not be permitted under the terms of the documents and the trustee would be exposed to breach of fiduciary duty if it consents to the modifications without the consent of all bondholders. Such consents are practically impossible. The trustee is then left with the Hobson's choice of going forward with the modification and being exposed to liability or refusing the modification and having the transaction fail completely.

By amending the definition of "trusts" to bring these trust indentures under the coverage of the Code, a trustee would then be allowed to seek judicial supervision of any modification. Judicial supervision would provide protection to the Trustee for going forward with a modification not presently permitted under the documents. [See provisions of Montana Code Annotated Section 72-33-413 (modification or termination) and 72-35-301 (proceedings concerning trusts)].

The second amendment deals with the increasing use of revocable trusts and the increased practice of designating a trust name and the document conveying ownership of property to the trust. Title companies have advised counsel that laymen who are making conveyances on their own, as well as some lawyers, are conveying property to a trust name rather than the name of a trustee. The amendment appearing in Section 2 cures this problem by stating that the designation of the name of the trust vests the estate in the name of the trustee of that trust.

Ex. 1 10 am
3-18-91
HB 471

Senate Judiciary Committee

-2-

March 18, 1991

Both amendments have the approval of the Montana Bar Association Trust Law Revision Committee.

If you have any questions or if I can provide any additional information, please do not hesitate to contact me.

BAM:dk-g

GOVERNOR'S AMENDMENTS TO
HOUSE BILL 471
(REFERENCE COPY, AS AMENDED)
APRIL 1, 1991

1. Page 5, line 19
Following: "party"
Insert: "or other recorded instrument"
2. Page 5, line 20
Strike: "his"
Insert: "the trustee's"

Gov. Amends.
HB 471